

Thomas-Jensen Affirmation

Exhibit # 92

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF NEW YORK et al.,

Plaintiffs,

v.

DONALD TRUMP, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE
UNITED STATES, et al.,

Defendants.

C.A. No. 25-CV-39-JJM-PAS

DECLARATION OF KATHERINE CALOGERO

I, Katherine Calogero, hereby depose and state as follows:

1. I am the Division Director of the Division of Fiscal Management for the New York State Department of Environmental Conservation (“NYSDEC”). I have held that position since July 1, 2024. I make this declaration as a representative of NYSDEC, in part based on the business records of NYSDEC and in part based on my personal knowledge and experience. In my official capacity and based on my personal knowledge and other sources of information I have obtained and reviewed in that official capacity, I am familiar with, and if called upon to do so, would be competent to testify to the facts and circumstances set forth herein.

2. This declaration describes the general scope and scale of programs implemented or administered by NYSDEC that are supported by federal funds appropriated by Congress under the Inflation Reduction Act (“IRA”) and Infrastructure Investment and Jobs Act (“IIJA”). I discuss one example of a grant-funded program that has already suffered a funding disruption as a result of the impoundment of funds under recent Executive Orders and related federal agency actions, and an example of a program that is at risk of similar disruption. Those programs—

involving the plugging of orphaned oil and gas wells and improving the health of urban and community forests—are delivering important public health and environmental benefits to New Yorkers who live in urban and rural communities. Finally, I discuss the Climate Smart Commodities Program, which although not funded pursuant to the IRA or IIJA, nonetheless suffered a funding disruption shortly after the new Presidential Administration took office.

IRA and IIJA Funded Programs

3. NYSDEC receives substantial funding under the IRA and the IIJA to support numerous programs to protect public health and the environment in New York. For example, between 2022 and 2024, NYSDEC received grant awards in the amount of \$26 million under the IRA and \$385.4 million under the IIJA to be spent over the next few years. As of January 20, 2025, under the IRA, DEC has spent \$400,000 out of its total awards and has been reimbursed for \$280,841; and under the IIJA, NYSDEC has spent \$175.1 million out of its total awards and has been reimbursed for \$171,833,436.

Plugging of Orphaned Oil and Gas Wells

4. As a first example, NYSDEC has received funding through both statutes to plug oil and gas wells in the state. NYSDEC is using IIJA funds for the plugging of high-priority orphaned oil and gas wells in central and western New York to help tackle pollution from this legacy energy infrastructure, while providing jobs in the oil and gas economic sector. In 2022, the U.S. Department of Interior (“DOI”) awarded NYSDEC \$25 million for this work. As of January 20, 2025, NYSDEC has disbursed \$22.9 million under this program and has been reimbursed for just over \$19 million by the federal government. In 2024, DOI awarded NYSDEC an additional \$25 million to continue this work but has no disbursements to date. Currently, NYSDEC is seeking reimbursement of approximately \$3.7 million for well plugging

work performed through the Fourth Quarter of 2024 and will be seeking additional reimbursement for work performed through the First Quarter of 2025.

5. And in December 2023, NYSDEC received an \$8.1 million grant from the U.S. Department of Energy (“DOE”) under the IRA’s Methane Emissions Reduction Program (“MERP”) for plugging marginal (low producing) conventional oil and gas wells. In New York State, approximately 75% of marginal conventional well operators produce gas for home use only and often lack sufficient resources to maintain or properly plug these wells. NYSDEC will use the MERP funding to mitigate environmental and public health and safety risks by permanently closing these oil and gas wells, thereby preventing methane and hydrogen sulfide emissions, oil and brine spills, and fire and explosive hazards, while creating good paying jobs. NYSDEC has worked extensively with DOE’s National Energy Technology Lab on software to prioritize wells for inclusion in the program and to build cost effective plugging projects based on each candidate well’s potential risk to the environment, public health, and public safety. NYSDEC is currently in the well plugging planning process under the MERP grant and has obligated \$800,000 to a contractor for this purpose. NYSDEC has publicized this program and has received inquiries from operators who wish to have their well plugged. If the MERP funding is canceled, New Yorkers will lose these important environmental and economic benefits.

6. On February 4, 2025, after NYSDEC fiscal staff received an error message while attempting to submit a reimbursement request for disbursements under the IJA well plugging grant, NYSDEC staff contacted a DOI representative for guidance. The DOI representative’s reply to NYSDEC stated: “Please refer to the following memo, *Unleashing American Energy* – OMB Memo M-25-11, regarding the funding pause.” The DOI representative’s email included a link to a federal Office of Management and Budget memorandum dated January 21, 2025, titled

“Guidance Regarding Section 7 of the Executive Order *Unleashing American Energy*.” A true and accurate copy of that email chain is attached hereto as Exhibit A.

Improving the Health of Urban and Community Forests

7. As an example of another program at risk of funding disruption, in July 2023, NYSDEC was awarded \$13.5 million in IRA funding for an Urban and Community Forest Program. NYSDEC plans to use the funding to jumpstart Community Forest Management Plans in disadvantaged communities, including preventing and addressing harm from the invasive Emerald Ash Borer and training local staff and those who care for municipal trees. NYSDEC is currently procuring tree planting and maintenance services under the program and expects to have contracts in place as soon as May 2025. Interruption to this funding would result in cancellation of these procurements, even though the State publicly announced in September 2024 the grant award and the State’s intent to retain these services in disadvantaged communities. NYSDEC is currently in the process of contracting with 24 grantees in communities across the State. When work is underway, the grantees would be able to request reimbursement from NYSDEC quarterly, and in turn NYSDEC would request reimbursement from USDA quarterly. If the funds for these programs are suspended or canceled, disadvantaged communities throughout the State would lose out on the important benefits provided by healthy urban and community forests.

USDA Climate-Smart Commodities Partnership

8. The U.S. Department of Agriculture (“USDA”) funds a program called Partnerships for Climate-Smart Commodities, which aims to improve resiliency to climate change in the agricultural and forestry sectors. The period for the grant program is January 1, 2023 through December 31, 2027.

9. On May 6, 2022, NYSDEC applied to the USDA for funding under the Partnerships for Climate-Smart Commodities program.

10. On April 24, 2023, NYSDEC received confirmation from USDA that NYSDEC had been awarded a grant in the amount of \$60 million under the Partnerships for Climate-Smart Commodities program.

11. NYSDEC's Climate-Smart Commodities grant will fund (a) establishment, restoration, and protection of forest lands in New York; (b) financial and technical assistance for New York farmers to improve the resiliency of their lands and operations to disruptions related to global climate change through adoption of "climate-smart" practices; (c) work to measure metrics on climate change-related benefits, costs, and landowner barriers related to climate-smart practices; and (d) promotion of large-scale development of markets for commodities produced using climate-smart practices. NYSDEC will fund these program areas through a mix of direct grants to landowners and distribution of funds to sub-awardees—the New York State Department of Agriculture and Markets ("NYSAGM") and the State University of New York's College of Environmental Science and Forestry ("SUNY ESF")—who in turn will use the funds to make grants and fund research, development, and technical assistance work.

12. Once the projects under the grant begin, NYSDEC will receive funds from the USDA on a reimbursement basis. NYSDEC will spend in the first instance, then report spending to the USDA, which would reimburse NYSDEC by drawing down from the remaining grant funds.

13. NYSDEC has suballocated \$35.2 million to NYSAGM with \$10.5 million encumbered with no disbursements; and \$11.8 million to SUNY ESF with no encumbrances or disbursements. NYSDEC manages the remaining \$13 million with no encumbrances or

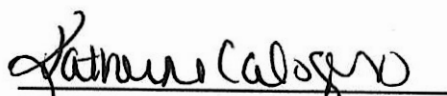
disbursements at this time. On October 30, 2024, NYSDEC released the invitation for bid for tree planting for farmers and landowners to create new forests, which closed on January 7, 2025. NYSDEC intends to make awards in the next couple of months.

14. On January 22, 2025, program staff in NYSDEC's Division of Lands and Forests received an email from USDA stating that as of January 21, 2025, the federal administration had placed a temporary suspension on all actions related to grants, including Partnerships for Climate-Smart Commodities grants. A true and accurate copy of that email is attached hereto as Exhibit B.

15. On January 23, 2025, NYSDEC program staff received another email from USDA stating that work can continue on existing awards until otherwise directed but that "[t]he above direction is subject to change pending updates from the current administration." A true and accurate copy of that email is attached hereto as Exhibit C. These communications have created confusion and uncertainty about the future of the program.

16. If the federal administration were to impound the funds remaining in NYSDEC's Climate-Smart Commodities award, the staff and work of funded programs at NYSAGM and SUNY ECF would be in jeopardy. Furthermore, NYSDEC and its subgrantees would be unable to provide financial and technical assistance to New York farmers and forest landowners for climate-smart development absent alternative funding, which would both leave the benefits of climate-smart practices for farmers and forest landowners unrealized and undermine NYSDEC's hard-won relationship with landowners.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 6th DAY OF FEBRUARY, 2025.



KATHERINE CALOGERO
DIRECTOR, DIVISION OF FISCAL MANAGEMENT

EXHIBIT A



RE: [EXTERNAL] ASAP error - D22AP00170

From Sarris, Eleni V <eleni_sarris@ibc.doi.gov>

Date Wed 2/5/2025 5:02 PM

To Frauenberger, Mark E (DEC) <Mark.Frauenberger@dec.ny.gov>

Cc Maio, James A <james_maio@ios.doi.gov>; orphanedwells, DOI <orphanedwells@ios.doi.gov>; IBC-AQD-FA States <aqd-fa.states@ibc.doi.gov>

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Mark,

Thank you for your recent email regarding Treasury's Automated Standard Application for Payments or ASAP.GOV. Please refer to the following memo, *Unleashing American Energy* – [OMB Memo M-25-11](#), regarding the funding pause.

We will be in contact as soon as we have additional information or updates. Thank you!

Best wishes,



Eleni Sarris
Lead Grant Management Officer, Team 3
Acquisition Services Directorate, AQD D5/B4
Interior Business Center
U.S. Department of the Interior
Direct: 571-513-3033 | Mobile: 720-276-9105
www.doi.gov/IBC

[Uniform Guidance for Grants and Agreements](#)
[GrantSolutions Training and Assistance](#)

From: Frauenberger, Mark E (DEC) <Mark.Frauenberger@dec.ny.gov>

Sent: Tuesday, February 4, 2025 11:12 AM

To: Sarris, Eleni V <eleni_sarris@ibc.doi.gov>

Subject: [EXTERNAL] ASAP error - D22AP00170

Importance: High

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Eleni,

I am attempting to do a draw in ASAP for grant D22AP00170 and am receiving an error message.

ERROR 2048: Summary payments cannot include draws that are subject to agency review.

Hoping you can give some guidance on how to proceed.

Thanks for your help,
Mark

Mark Frauenberger

Associate Accountant, Division of Fiscal Management

New York State Department of Environmental Conservation


625 Broadway, Albany, NY 12233-4751

P: (518) 402-9371 | mark.frauenberger@dec.ny.gov

www.dec.ny.gov |  |  | 



EXHIBIT B

 Outlook

FW: FOR DISTRIBUTION TO GRANT RECIPIENTS: Partnerships for Climate-Smart Commodities Grant Update

From Abouali, Mustapha - FPAC-NRCS, NV <mustapha.abouali@usda.gov>

Date Wed 1/22/2025 1:23 PM

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hello Grantees,

Please see message below for your awareness.

Thank you,

Mustapha & John,
National Program Officers

Office of the Associate Chief | Center for Sustainable Commodity Markets



Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE

USDA is an equal opportunity provider, employer, and lender.

Dear Grant Recipients,

As of late yesterday, January 21, 2025, the administration placed a temporary suspension on all actions related to grants, including Partnerships for Climate-Smart Commodities grants. This is a fluid situation, and we ask for your patience as we work to gain additional clarification for you in the coming days.

Please contact your National Program Officer if you have additional questions. We will continue to provide periodic updates via email as more information becomes available.

Sincerely,
Katina

Katina D. Hanson
Director

Office of the Associate Chief | Center for Sustainable Commodity Markets



Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE

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EXHIBIT C



FOR DISTRIBUTION TO GRANT RECIPIENTS: Partnerships for Climate-Smart Commodities Grant Update FAQs

From Anderson, John - FPAC-FSA, SD <john.a.anderson@usda.gov>
Date Thu 1/23/2025 6:58 AM
To Anderson, John - FPAC-FSA, SD <john.a.anderson@usda.gov>
Cc Abouali, Mustapha - FPAC-NRCS, NV <mustapha.abouali@usda.gov>

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Hi!

Additional information & clarification.

Thanks for your patience as we work through these new directives.

John & Mustapha

Dear Grant Recipients,

We have received additional guidance from the USDA Office of the Chief Financial Officer's office on the temporary suspension of all USDA actions related to grants, including Partnerships for Climate-Smart Commodities grants. Please see Frequently Asked Questions (FAQs) below:

1. Does the moratorium include no-cost extensions or no-cost modifications on existing awards?

- a. Answer: No, it does not apply to no-cost extensions or no-cost modifications. This may include budget revisions that do not obligate additional funds, no-cost extensions of time, changes in key staff, and other changes that do not result in any additional expenditure of funds (regardless of their source).

2. Can existing work continue under active awards?

- a. Answer: Yes, until such time that you receive guidance in the future that specific transactions must be modified or terminated.

3. Can payments or claims be processed under existing awards?

- a. Answer: At this time, yes, payments or claims may continue to be processed under existing awards, provided that they are not funded using IRA and IIJA funding sources. Additional guidance related to IIJA and IRA funds will be provided by OCFO and/or OBPA, when available.

The above direction is subject to change pending updates from the current administration. Any updates will be communicated in writing when available.

Again, this is a fluid situation, and we ask for your patience as we work to gain additional clarification for you in the coming days. Please contact your National Program Officer if you have additional questions. We will continue to provide periodic updates via email as more information becomes available.

Sincerely,
Katina

Katina D. Hanson
Director

Office of the Associate Chief | Center for Sustainable Commodity Markets



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